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AZMAN TEH v. CHONG SHAO FEN & ANOR

COURT OF APPEAL, PUTRAJAYA
AZMAN ABDULLAH JCA
AHMAD FAIRUZ ZAINOL ABIDIN JCA
LIM HOCK LENG JCA
B [CIVIL APPEAL NO: W-03(IM)(NCVC)-91-11-2023]
27 AUGUST 2025

Abstract – *(i) There ought not to be any appellate intervention against a re-assessment of damages unless the court below has acted on a wrong principle of law, and the amount awarded is either so extremely high or low so as to make it an entirely erroneous assessment; (ii) In the assessment of a claim for damages arising from construction/demolition works, the court below ought to consider all evidence available to ensure that the contractors/engineers had taken all steps necessary to ensure that the foundation of the property and/or adjoining properties are not affected. In the absence of any preventive measures causing damages/loss to the owners of the properties affected, the reasonably foreseen consequences would follow, and liability to damages would attach.*

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DAMAGES: *Assessment – Negligence – Claim for damages caused by construction works carried out by neighbour – Bungalow became unsafe for inhabitation – Apportionment of 30% liability against consultant engineer – Whether damages correctly classified as general damages – Whether measure of damages would be actual proof of loss of rental or genuine reasonable estimate of rental of property – Whether award of aggravated/exemplary damages justified – Whether quantum correctly assessed – Whether failure by owners to mitigate loss established – Whether there were overlapping claims – Whether assessment of repair and rectification works supported by evidence*

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The respondents' ('plaintiffs') bungalow was damaged by demolition/construction works carried out by their neighbours in 2009. They sued their neighbours, the first and second defendants, the architect, contractor, and consultant engineer, the third, fourth and fifth defendants respectively, for negligence. The first and second defendants were found 100% liable by the original trial judge but, the decision was set aside on appeal, wherein the Court of Appeal apportioned liability of 30% to the first and second defendants, 40% to the fourth defendant and 30% to the fifth defendant, the appellant herein. However, at the assessment of damages, the Deputy Registrar dismissed the plaintiffs' claim entirely. On appeal, the High Court Judge ('HCJ') allowed the claims for repair and rectification of the bungalow and aggravated and/or exemplary damages, but not loss of rental/loss of use

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of the bungalow and their other claims. The fifth defendant, having failed to set aside the assessment and judgment, appealed against the HCJ order. The Court of Appeal set aside the assessment of the HCJ and ordered re-assessment to be heard before the High Court in respect of the fifth defendant. The High Court allowed the plaintiffs' claim for reassessment of damages against the fifth defendant, the subject of the present appeal. Separately, the appeals by the plaintiffs and the first and second defendants before the Court of Appeal resulted in the first and second defendants being ordered to pay the plaintiffs for loss of rental/loss of use of the bungalow and aggravated and/or exemplary damages with liability as apportioned earlier. The Court of Appeal ordered the first and second defendants to pay certain amounts of damages under three heads of damages which were identical to what the High Court had ordered the fifth defendant to pay.

Held (dismissing appeal with costs)
Per Lim Hock Leng JCA delivering the judgment of the court:

(1) The damages were correctly classified as general damages. In cases where a plaintiff has been wrongfully deprived of the use of property, the measure of damages would be actual proof of the loss of rental or a genuine reasonable estimate of the rental that the property might have fetched but for the wrongful action. The loss of rental was used as a yardstick for the plaintiffs' loss of use of their bungalow from the time they moved out. Further, the claim for loss of rental/loss of use of the bungalow could not have been ascertained with certainty as a large part of the relevant period was after the filing of the action in 2011. As such, the loss and damages relating to the loss of use of the bungalow was such that 'the precise amount of item of damages' could not have become clear before the trial. Such loss and damage could not be classified as special damages. (paras 30-33, 35 & 36)

(2) The plaintiffs were entitled to pursue their claim in general damages, having pleaded that they had to move out of their bungalow for safety reasons. The quantum of damages for loss of rental/loss of use in the sum of RM2,171,570,00 (with some variables) was assessed against the fifth defendant who would be accountable for 30% of the sum as per the apportionment of liability. In respect of any prejudice that may accrue to the fifth defendant on account of the plaintiffs' pleaded case, it was significant that the plaintiffs had abandoned their claim for loss of rental for the apartment in Bukit Bandaraya and adduced no evidence relating to that head of claim. There was thus no issue of overlapping claims. (paras 38-40)

(3) The bungalow had become uninhabitable. The plaintiffs were not in a position to elect between the option of occupying the bungalow while carrying out repair and rectification works, or selling the bungalow and

claiming the diminution in value since it was unsafe for inhabitation. There was no failure to mitigate as the tortfeasors failed to carry out the works ordered by the original trial judge. (para 44)

(4) The basis of the claims for the repair and rectification costs for the bungalow was justified and there were no overlapping or double claims. A perusal of the geotechnical inspection report showed that there were repair and rectification works which have yet to be carried out. It was clear from the evidence that the cause of the problems was the defendants' negligence, and not due to the pre-existing lack of maintenance of the bungalow. There was no double claim, and the High Court could not be said to have been plainly wrong in assessing repair and rectification works in the sum of RM1,171,012 which was amply supported by evidence. (paras 47, 52 & 53)

(5) Aggravated/exemplary damages of RM300,000 were awarded on account of the reckless and gross negligence of the appellant who did not put up with the extra costs at the expense of the respondents, and for the overall conduct of the appellant. There was contumelious disregard for the respondents' rights which justified either or both the aggravated/exemplary damages awarded as a whole. The quantum was justified and not manifestly excessive such that appellate intervention was warranted. (paras 56, 57 & 59)

Case(s) referred to:

Beatrice Ramanathan & Anor v. Shah Alam Properties Sdn Bhd & Another Case [1994] 4 CLJ 646 HC ***(dist)***

Eu Sim Chuan & Anor v. Kris Angsana Sdn Bhd [2006] CLJU 152; [2006] 1 LNS 152 HC ***(refd)***

Inverugie Investments Ltd v. Hackett [1995] 3 All ER 841 ***(refd)***

Ong Ah Long v. Dr S Underwood [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 FC ***(dist)***

Othman Ali & Ors v. Bukit Lenang Development Sdn Bhd [2016] 6 CLJ 508 CA ***(dist)***

Sambaga Valli KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] CLJU 500; [2017] 1 LNS 500 CA ***(refd)***

Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd [1995] 1 CLJ 15 FC ***(refd)***

For the appellant - Palanivel KV Sathasivam & Siow Chang Yao; M/s Palani Aishah & Co

For the respondent - Chan Chow Wang & Leong Jin Hoong; M/s Syarikat Chan Chow Wang

[Editor's note: For the High Court judgment, please see Chong Shao Fen & Anor v. Mehrzad Nabavieh & Ors [2022] CLJU 1160; [2022] 1 LNS 1160 (affirmed).]

Reported by S Barathi

JUDGMENT

Lim Hock Leng JCA:

Introduction

[1] The respondents/plaintiffs' bungalow at 50 Jalan Taman Pantai, Kuala Lumpur, was damaged by demolition/construction works carried out by their neighbours in 2009.

[2] They sued their neighbours (the first and second defendants) and their neighbours' architect, contractor, and consultant engineer (the third, fourth and fifth defendants) for negligence.

[3] The litigation has a long and chequered history but the appeal before us is by the fifth defendant/appellant alone.

[4] The appeal is against the decision of the learned HCJ Nik Hasmat Nik Mohamad J on 1 November 2023.

[5] The learned HCJ had allowed the plaintiffs' claim for re-assessment of damages against the fifth defendant with costs of RM5,000 subject to the payment of the allocatur fee, as follows:

(i) loss of rental/loss of use of the bungalow - RM2,171,570;

(ii) repair and rectification of the bungalow - RM1,171,012; and

(iii) aggravated and/or exemplary damages - RM300,000.

[6] The learned HCJ did not allow the claims for mental distress and hardship, and costs of moving back to the bungalow.

[7] The guiding principle in an appeal against a re-assessment of damages is that there ought not to be any appellate intervention unless the court below has acted on a wrong principle of law, and the amount awarded is either so extremely high or low so as to make it an entirely erroneous assessment. See the decision of the Federal Court in *Tan Sri Khoo Teck Puat & Anor v. Plenitude Holdings Sdn Bhd* [1995] 1 CLJ 15.

[8] To appreciate the arguments concerning the loss of rental/loss of use of the bungalow, and apportionment of liability, it is necessary to set out a timeline of events.

The Litigation Leading To Reassessment Of Damages Against The Fifith Defendant

[9] The original trial judge held the first and second defendants 100% liable with damages to be assessed by the Senior Assistant Registrar, while dismissing the claims against the third, fourth and fifth defendants in 2013.

[10] On 12 January 2015, the Court of Appeal set aside the High Court judgment.

[11] The Court of Appeal made various orders and apportioned liability of 30% to the first and second defendants, 40% to the fourth defendant, and 30% to the fifth defendant. Only the third defendant was not found liable. An assessment of damages was ordered. It was subsequently heard by the Deputy Registrar.

[12] On 2 February 2021, the Deputy Registrar dismissed the plaintiffs' claims entirely.

[13] On 23 June 2021, on appeal, Nazlan J (as he then was) allowed the claims for repair and rectification of the bungalow in the sum of RM1,171,012 and aggravated and/or exemplary damages in the sum of RM300,000, but not for the loss of rental/loss of use of the bungalow and their other claims.

[14] On 30 September 2021, the fifth defendant failed to set aside the assessment and judgment on the grounds of non-service of the writ and statement of claim, and that the legal firm Messrs Lin Coln & Co had never been appointed to act for him.

[15] Aggrieved by the dismissal of his application to set aside the judgment by the High Court, the fifth defendant appealed.

[16] On 8 November 2022, the Court of Appeal set aside the assessment by Nazlan J (as he then was) and ordered the re-assessment to be heard before the High Court in respect of the fifth defendant. That was how the re-assessment came before Nik Hasmat Nik Mohamad J on 1 November 2023 (by way of an appeal against the decision of the Deputy Registrar), and it is now the subject of the appeal before us.

[17] On 17 November 2022, separately, the appeals by the plaintiffs and the first and second defendants came before the Court of Appeal. The net result was that the first and second defendants had to pay the plaintiffs' loss of rental/loss of use of the bungalow (RM2,171,570), repair and rectification of the bungalow (RM1,171,012) and aggravated and/or exemplary damages (RM300,000), with liability as apportioned earlier.

[18] So much for chronology which explains how the appeals concerning the first and second defendants on one hand, and the fifth defendant on the other hand, came to be detached and separated.

[19] It has also been seen that the Court of Appeal had ordered the first and second defendants to pay certain amounts of damages under three heads of damages which are identical to what Nik Hasmat Nik Mohamad J, the learned HCJ, had ordered the fifth defendant to pay.

[20] There is no question of the principle of *res judicata* barring the fifth defendant/appellant from pursuing his appeal before us on account of the Court of Appeal's decision on 17 November 2022. The previous decision fastened liability on the first and second defendants. The fifth defendant was not a party in that appeal. The matter therein is not *res judicata* as against the fifth defendant.

[21] The fifth defendant's appeal can thus be heard on its merits.

Damages For Loss Of Rental/Loss Of Use Of The Bungalow (RM2,171,570)

[22] We will first deal with the damages for loss of rental/loss of use of the bungalow (RM2,171,570) which the learned HCJ had assessed against the fifth defendant/appellant here.

[23] In regard to the first head of damages, the appellant contended that the loss of rental or use of the bungalow are special damages which were not pleaded.

[24] Next, the appellant pointed out that it was the respondents' pleaded case that, due to the structural instability caused to their bungalow, they had moved out to the second respondent's Bukit Bandaraya apartment on 27 August 2009 till the bungalow could be made habitable *vide* para. 18 of the statement of claim: "Disebabkan ini, plaintif-plaintif menegaskan bahawa plaintif kedua telah hilangan sewa bulanan yang boleh dikutip untuk pangsapuri tersebut yangh (*sic*) berjumlah RM3,200 sebulan". It was submitted that the plaintiffs were bound by their pleading that their loss of rental was for the apartment instead of the bungalow.

[25] In response, the respondents began by detailing the extensive damage to their bungalow including damage to water and sewage pipes, structural damage, as well as the impact on the integrity of the bungalow's foundation which were supported by the building survey report prepared by a building surveyor, Professor William Hamilton (PW1). In the building report, PW1 had expressed his view, *inter alia*, that the respondents and their family were fully justified in moving out of the bungalow in view of the proximity of a virtual vertical cliff of earth over six meter deep with growing erosion.

[26] Further, Ir Dr Gue See Sew (PW3) had on 30 October 2009, advised the first plaintiff to move out of the bungalow for safety reasons.

[27] Furthermore, and most significantly, Sayed Hossein Khezri (DW2), the representative of the neighbours (the first and second defendants) had asked the first respondent to move out as he believed the respondents' bungalow was in danger of collapsing.

[28] There was no independent rebuttal report tendered by the appellant. Some seven weeks after the respondents moved out of the bungalow on 27 August 2009, the boundary wall collapsed.

[29] That said, and moving on from liability, the learned HCJ was not plainly wrong when she held: "Despite not specifically pleaded in the plaintiffs' statement of claim, the plaintiffs' claim for loss of rental is allowed under general damages which does not require its specific pleading. The plaintiffs' rental loss following the loss of use of the bungalow is clearly not special damages but instead constitutes general damages which cannot be pleaded in the statement of claim".

[30] The loss of rental was used as a yardstick for the respondents' loss of use of their bungalow from the time they moved out on 27 August 2009 till May 2020, based on the report and valuation of Deb Brata Das Gupta (PW3), a chartered surveyor and registered valuer with about four decades of working experience.

[31] In cases where a plaintiff has been wrongfully deprived of the use of property, the measure of damages would be actual proof of the loss of rental or a genuine reasonable estimate of the rental that the property might have fetched but for the wrongful action. See the advice of the Judicial Committee of the Privy Council in *Inverugie Investments Ltd v. Hackett* [1995] 3 All ER 841.

[32] As there was no actual rental paid, a notional rental had to be determined which would, as closely as possible, reflect the loss of use of the bungalow. Towards that end, a variety of rental values was adduced (ranging from RM10,000 to RM18,000 per month in the Taman Bukit Pantai area).

[33] With that in mind, the damages were correctly classified as general damages.

[34] The appellants' reliance on *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 is misconceived. In that case, the Federal Court held that "the exact loss must be pleaded where the precise amount of item of damages has become clear before the trial either because it has already occurred and so become crystallised, or because it can be measured with complete accuracy".

[35] On the facts of the present dispute, the claim for loss of rental/loss of use of the bungalow could not have been ascertained with certainty.

[36] The respondents, when the statement of claim was prepared, could not have pleaded losses which had yet to be incurred with mathematical precision, more so when the head of claim was over a certain time within the period 27 August 2009 till May 2020 when there were fluctuations. And, notably, a large part of the relevant period was after the filing of the action in 2011. As such, the loss and damages relating to the loss of use of the bungalow was such that "the precise amount of item of damages" could not have become clear before the trial. Such loss and damage could not be classified as special damages.

[37] Indeed, it was Chew Sok Kwee (DW2) who gave evidence that the typical monthly rental in the same neighbourhood "would be in the region of RM7,000 to RM18,000 ranging from condominium unit to bungalow", before acknowledging under cross-examination that the market rental of the subject bungalow is in the region of RM18,000 per month.

[38] It was thus the quantum of damages for loss of rental/loss of use in the sum of RM2,171,570 (with some variables) was assessed against the fifth defendant who would be accountable for 30% of the sum as per the apportionment of liability.

[39] In respect of any prejudice that may accrue to the appellants on account of the respondents' pleaded case, it is significant that the respondents had abandoned their claim for loss of rental for the apartment in Bukit Bandaraya and adduced no evidence relating to that head of claim. There is thus no issue of overlapping claims.

[40] The respondents were hence entitled to pursue their claim in general damages as averred in prayer (h), having pleaded that they had to move out of their bungalow for safety reasons and "rumah plaintif-plaintif kini tidak sesuai langsung untuk dihuni kerana struktur adalah diragui".

[41] Further, the appellant could not be said to be prejudiced or to have been taken by surprise, given the witness statements and reports made available before the trial/assessment/re-assessment.

[42] We find no merit in the appellant's contention that the learned HCJ could not assess and award damages for loss of rental/use of the bungalow. The appellant referred to the High Court's decision in *Beatrice Ramanathan & Anor v. Shah Alam Properties Sdn Bhd & Another Case* [1994] 4 CLJ 646; [1994] 2 MLRH 782 where it was held: "... the general object underlying the rules for the assessment of damages in the case of a tort causing damage to real property, the court is required to apply one or the other of two quite different measures of damage. The first is to adopt the diminution in value to the plaintiff and the second is to adopt the actual cost of repair or reinstatement. Which measure is appropriate will depend on a number of factors. Be that as it may the diminution in value is the true measure of damage if and only if the plaintiff is selling or reasonably intending to sell the property in its damaged state or where it can be established that the plaintiff is holding on to the property merely for investment purposes. On the other hand if the plaintiff intends to continue to occupy it and to repair the damage the proper measure is clearly the cost of all such repairs".

[43] In that case, the plaintiff in question was at all material times in occupation of the subject property which had been damaged by the defendant's torts. She had been paid RM42,000 by way of a consent order and also sought assessment of damages for her property's "devaluation". The *ratio* in that case was that she could not claim for both heads of damages.

[44] Here, the bungalow had become uninhabitable. It was no longer safe to stay there. The respondents in the instant case were not in a position to elect between the option of occupying the bungalow while carrying out repair and rectification works, or selling the bungalow and claiming the diminution in value since it was unsafe for inhabitation. There is no failure to mitigate as the tortfeasors failed to carry out the works ordered by the original trial judge.

[45] The material facts in *Othman Ali & Ors v. Bukit Lenang Development Sdn Bhd* [2016] 6 CLJ 508; [2016] 6 MLRA 65, a decision of the Court of Appeal which the appellant cited, are markedly different. In that case, there

was no loss as the land in its entirety had increased in value. There was no direct evidence of the costs of repairs and also no evidence of what would be a fair rental that the plaintiff could have expected from the land.

Repair And Rectification Costs For The Bungalow (RM1,171,012)

[46] The thrust of the appellants' contention regarding this head of claim is that "since the reliefs sought by the respondents in respect of the repair and rectification works were granted by the learned trial judge and subsequently the said remedial works had already been duly carried out based on Dr Gue's recommendations, no further claim for the same repair and rectification works should be allowed as that would result in double claim".

[47] A perusal of the grounds of judgment of the learned HCJ and Nazlan J (as he then was) will show that the basis of the claims was justified and there are no overlapping or double claims.

[48] The learned HCJ observed that the fifth defendant had waived his right to challenge the oral testimony of PW2 and PW3 when he failed to attend the proceedings though served with the notice for assessment of damages. Her Ladyship noted the supporting evidence for the repair and rectification works, in particular, the written and oral evidence of PW1 who during trial recommended rectification and repair on the plaintiffs' bungalow, PW3's valuation report, and exh. "P6" (the quotation for repair costs).

[49] Nazlan J (as he then was) was of the view that there was "no paucity of evidence in respect of the claim for the costs of repair and rectification of the plaintiffs' property. Ir Dr Gue See Sew (PW1) had given evidence as to the damages to the property that necessitated works and had produced his geotechnical inspection report dated January 2020 and the earlier preliminary geotechnical report dated June 2010".

[50] His Lordship went on to hold: "Yap Tin Soon (PW2), a contractor, gave evidence and submitted his estimated costs of repair and rectification and who had taken 48 photographs showing the damage to the plaintiffs' property as well as his reliance on the building survey report dated December 2010 prepared by Prof Hamilton and the accompanying notes of evidence at the liability proceedings. PW2 in his evidence confirmed that his quotation involved in respect only of repairing and rectifying the affected and damaged sections of the property, specifically of the bungalow, the garden compound and building of a new common boundary wall at the total cost of RM1,171,012".

[51] Subsequent to the collapse of the common boundary wall and the garden compound in 2009, the fourth defendant built a retaining wall and another layer had to be added. It was found to be ineptly done by PW1. The fourth defendant had rebuilt the common boundary wall which was also found to be unsatisfactory.

[52] A perusal of the geotechnical inspection report prepared by Ir Dr Gue See Sew (PW3) in January 2020 shows that, moving forward, there are repair and rectification works which have yet to be carried out, such as the repair of all cracks in the boundary wall, staircase wall and above the stormwater outlet; the reinstatement of the reinforced concrete slab between the lower and upper staircase; and the reinstatement of the lower staircase with proper compaction of the soil. On top of that, the drainage and sewerage system have to be checked and repaired to prevent leakage from undermining the adjacent foundation of the bungalow. It is clear from the evidence that the cause of the problems is due to the negligence of the respondents, and not due to the pre-existing lack of maintenance of the bungalow.

[53] There was no double claim, and the learned HCJ cannot be said to have been plainly wrong in assessing repair and rectification works in the sum of RM1,171,012 which was amply supported by evidence.

Aggravated/Exemplary Damages (RM300,000)

[54] Prior to the collapse of the common boundary wall, the respondents could have put sheet piles in place adjacent as a preventive measure, more so as cracks had appeared in the wall of the bungalow as early as the middle of 2009, about three months before the collapse. They did not do so.

[55] As noted by the learned HCJ, during that three-month period, "no step was taken by the defendants to prevent the collapse of the boundary wall, not even the piling of sheet piles on the wall".

[56] Aggravated/exemplary damages of RM300,000 were thus awarded on account of the reckless and gross negligence of the appellant who did not put up with the extra costs at the expense of the respondents, and for the overall conduct of the appellant.

[57] The quantum is justified and not manifestly excessive such that appellate intervention is warranted. Reference may be made to *Eu Sim Chuan & Anor v. Kris Angsana Sdn Bhd* [2006] CLJU 152; [2006] 1 LNS 152; [2007] 1 MLJ 734 where Azmel Maamor J, in awarding aggravated/exemplary damages of RM500,000, held:

> On the facts of this case it is quite obvious that the cause of damage to the Plaintiff's property was due to the excavation works carried out by the defendant at the site adjacent to the Plaintiffs' bungalow. And the damage began to appear during the excavation works carried out by the defendant. The matter could have been easily settled if at that time the defendant were to admit liability and agree to do the necessary repair and ratification works as well as necessary preventive measures. The defendant refused to admit that they were liable for its action. Instead the defendant preferred to wait for the Plaintiff to bring court action knowing that this would take years to complete. The longer the delay the more advantageous would it be to the defendant. As for the Plaintiffs, the longer the delay the more painful would be their sufferings. This is how

A the defendant in this case actually behaved. In addition to that having considered the proximity of the Plaintiffs' property to the excavation site, adequate tests and precautionary measures should have been taken by the defendant to ensure that the foundation of the Plaintiff's property would not be affected by their excavation activities. The defendant should have determined the type of foundation on which the Plaintiff's house was
B constructed *vis-à-vis* the nature of the soil found there, and then to take appropriate steps to ensure that the Plaintiff's property would not be damaged. No such tests or any preventive measures were carried out by the defendant on the Plaintiff's property. Any reasonable person, more so a developer of the defendant's standing, would have foreseen the
C consequence of the excavation works on the Plaintiffs' property. This clearly indicates couldn't care less attitude of the defendant which is most uncalled for. The sole concern of the defendant was to quickly complete the construction and reap as much benefits with the minimum amount of costs incurred. It is a very selfish attitude most undesirable in a community we Malaysians are used to. The behaviour and attitude of
D developers towards their neighbours have been so degrading that appropriate authorities should take necessary steps to check their activities to ensure that their neighbours are not adversely affected. In the light of such behaviour and attitude of the defendant towards the Plaintiff, I allow the claim for aggravated and/or exemplary damages against the defendant in the sum of RM500,000.

E **[58]** Notably, the Court of Appeal upheld the award of aggravated/ exemplary damages in that case. As highlighted by the Court of Appeal, not unlike the case at hand: "the respondents had given the appellant very early warnings as regards the extent of the damages pursuant to its activities but to no avail. No serious preventive measures were undertaken and the
F sufferings of the respondents merely multiplied".

[59] There was contumelious disregard for the respondents' rights which justify either or both the aggravated/exemplary damages awarded as a whole here. See *Sambaga Valli KR Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal* [2017] CLJU 500; [2017] 1 LNS 500; [2018]
G 3 MLRA 488.

Conclusion

[60] In the upshot, we unanimously dismiss the appeal with costs of RM20,000 subject to payment of the allocator fee. The decision and awards
H of damages by the learned HCJ in the re-assessment of damages exercise are hereby affirmed.

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